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6
7 UNITED STATES DISTRICT COURT
8 EASTERN DISTRICT OF WASHINGTON

9 ELF-MAN, LLC,

10 Plaintiff,

11 v.

12 RYAN LAMBERSON,

13 Defendants.
14

Civil Action No. 13-cv-00395 TOR

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
STRIKE

15 It is unfortunate that Defendant continues to waste the time of the Court and the
16 parties with unnecessary motion practice in the posture of the case where there is a
17 pending motion to dismiss. On top of that, Defendant does so in a motion requiring
18 proof of prejudice where he has literally none and based on a rule at best ambiguous
19 and subject to two reasonable interpretations.

20 Plaintiff docketed and prepared its response to Defendant's motion according to
21 its reading of the local rules. LR 7.1(b) establishes a period of 14 days for the
22 responsive memorandum plus "the additional 3-day period allowed under Fed. R. Civ.
23 P. 6(d) . . . regardless of the method of service." In other words, it matters not that
24 Defendant's motion to compel was served via ECF, mail or otherwise, the 3-day period
25 under Rule 6(d) is included, making Plaintiff's response due 17 days after the June 13
26

1 motion filing date, or by June 30, when the response was filed and served. Defendant
2 argues a different reading of this rule. At best this local rule is vague, and based on
3 Defendant's argument subject to two different interpretations.

4 Even if Defendant's interpretation is correct and Plaintiff's response was filed
5 one business day late, there is absolutely no prejudice to Defendant—the hallmark test
6 for invoking the Court's inherent authority to punish a technical violation. Indeed,
7 Defendant cannot even articulate any way in which it would be prejudiced, alleging
8 only in conclusory fashion that “[p]laintiff's late filing prejudices Mr. Lamberson who
9 must now prepare a Reply Memorandum and associated Declaration to counter the
10 misleading Opposition filed by plaintiff in violation of the rules.” This statement is
11 completely circular and utterly devoid of merit. Had Plaintiff's response been filed on
12 Friday instead of Monday, Defendant would have still had to prepare a reply, and thus
13 simply having to prepare a reply does not demonstrate prejudice, but rather is simply
14 part of the normal briefing process. Defendant does not even try to point to any actual
15 prejudice caused by Plaintiff's filing on Monday instead of Friday because none
16 exists—even assuming the rule was misunderstood, the deadline was docketed
17 incorrectly and the response filed a day late.

18 It is ironic that Defendant cites *Sidney-Vinstein*. Defendant's underlying motion
19 to compel privileged discovery where the claims have been voluntarily dismissed and
20 the case should be terminated aptly fits within the category of “litigating spurious
21 issues.” Defendant's motion to strike provides yet another example. In an effort to
22 avoid further machinations by defense counsel, Plaintiff respectfully submits in the
23 interest of judicial and party efficiencies that the merits of case be considered as soon as
24 possible. Pending before the Court is Plaintiff's motion to dismiss with prejudice all
25 claims against Defendant, which disposes not only of Plaintiff's claims but also
26 Defendant's declaratory judgment claims, resulting in a complete termination of this

1 case. As confirmed by the declaration of prior counsel in this case (and her legal
2 assistant) filed with Plaintiff's response, there are no legitimate discovery service issues
3 and this case has been diligently and reasonably prosecuted to this point. There is
4 absolutely no evidence that this case was brought in bad faith or without reasonable
5 prior investigation, and therefore no justification for prolonging and perpetuating the
6 litigation. Plaintiff respectfully requests that Defendant's motion to strike and
7 underlying motion to compel be DENIED and Plaintiff's pending motion to dismiss
8 (ECF No. 59) be GRANTED and the case terminated.

9 RESPECTFULLY SUBMITTED this 7th day of July, 2014.

10 s/David A. Lowe, WSBA No. 24,453

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on July 7, 2014 to all counsel or parties of record who are deemed to have consented to electronic service via the Court's CM/ECF system.

s/ Jeremy Black